Tax treatment of losses in cross-border situations

2007/2144(INI) - 15/01/2008 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report drafted by Piia-Noora **KAUPPI** (EPP-ED, FI) in response to the Commission communication on tax treatment and losses in cross-border situations. The resolution was adopted by 491 votes for, 109 against, and 90 abstentions. Parliament stated that the existence of 27 different tax systems in the EU constituted an impediment to the smooth functioning of the internal market, caused significant additional costs for cross-border trade in terms of administration and compliance, hindered corporate restructuring, and lead to cases of double taxation.

MEPs expressed concern over the negative impact that the different treatment of cross-border losses by Member States has on the functioning of the internal market. They noted that any measure which impeded the freedom of establishment was contrary to Article 43 of the EC Treaty and that its removal ought thus to be the focus of targeted action. Differing company tax regimes created obstacles to entering different national markets and the proper functioning of the internal market, distort competition, and prevent the maintenance of a level playing field for undertakings at EU level and thus merited attention of this kind. Targeted action at EU level in respect of tax deductions of cross-border losses could be of greater benefit to the functioning of the internal market.

Parliament stressed that any targeted measure to introduce cross-border loss relief should be defined and implemented on the basis of a multilateral, common approach and coordinated action by the Member States in order to guarantee the coherent development of the internal market. Such targeted measures represented an intermediate solution pending the adoption of the Common Consolidated Corporate Tax Base (CCCTB), which constituted a comprehensive long-term solution for tax obstacles linked to the cross-border offsetting of losses and profits, as well as for transfer pricing and cross-border merger and acquisition and restructuring operations.

Parliament considered that action in favour of groups of companies that did business in several Member States should be a priority, as it was precisely those groups that suffered from different treatment with regard to cross-border losses, compared to groups of companies that did business in one Member State only. The distortions arising from the difference in national systems penalised SMEs in particular in comparison with their potential competitors and the Commission should adopt specific measures in that area.

Acknowledging that simply extending domestic regimes to cross-border situations was difficult as the tax bases were different, Parliament urged that the relevance of cross-border loss relief be acknowledged whilst underlining that further in-depth elaboration was necessary as regards the cross-border loss relief scheme. A decision should be taken as to whether cross-border loss relief should be limited to subsidiaries as regards their parent company or vice versa and a thorough assessment should therefore be made of the budgetary effects of the scheme whereby the subsidiaries' profits are allowed to set off the parent company's losses. Parliament discussed the judgment of the Court of Justice in the Marks & Spencer case and in the Oy AA case. It believed that corporate groups present in several Member States should be treated as far as possible in the same way as groups present in a single Member State. In situations involving cross-border losses by foreign subsidiaries, double-taxation of the parent company must be avoided, fiscal competence must be fairly distributed between Member States, losses may not be offset twice and tax avoidance must be prevented.

Parliament welcomed the three options proposed in the Commission communication on Tax Treatment of Losses in Cross-Border Situations. It signalled its support for targeted measures which would enable the

effective and immediate deduction of losses by foreign subsidiaries (on an annual and not simply terminal basis, as in the Marks and Spencer case) which would be recaptured once the subsidiary returns to profit through a corresponding additional tax on the parent company. It recommended, in order that those proposals could be implemented in such a way as to prevent tax evasion, considering whether it would be appropriate to establish an automatic information exchange system, similar to the VIES for VAT, so that the Member States could check the existence of negative tax bases declared by subsidiary companies in other Member States. Nonetheless, Parliament urged the Commission to investigate further the possibilities of providing companies with a consolidated corporate tax base for their EU-wide activities.